



December 20, 2001

Ms. Kimberley Mickelson
Olson & Olson
Three Allen Center, Suite 3485
333 Clay Street
Houston, Texas 77002

OR2001-6019

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156425.

The City of Friendswood (the "city") received a request for correspondence to and from the company conducting the search for a police chief and all documents relating to any on-the-job or fleet accident involving a named police officer. You state that you have previously requested a decision from this office concerning whether the information responsive to the first half of the request is excepted from public disclosure. Furthermore, you claim that the requested information regarding accidents involving the named police officer is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have also received comments from the requestor. *See* Gov't Code § 552.304. We have considered all of the submitted arguments and reviewed the submitted information.

You first contend that you have already requested a ruling concerning whether the information responsive to the request for correspondence to and from the company conducting the search for a police chief must be released to the requestor. We ruled on that request in Open Records Letter No. 2001-5524 (2001) and determined that, with the exception of certain information protected under section 552.117(2) of the Government Code, the city was required to release the requested information. Based on this previous ruling, we find that the city must release the information responsive to the request for correspondence to and from the company conducting the search for a police chief, with the exception of that portion of the information we determined in that ruling to be excepted under section 552.117(2). *See* Gov't Code § 552.301(f); Open Records Decision Nos. 673 (2001), 670 (2001).

With respect to the information responsive to the request for documents relating to any on-the-job or fleet accident involving a named police officer, we will address the exceptions you claim. First, you contend that a peace officer's accident report responsive to the request is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 550.065(b) of the Transportation Code provides that except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 1544, § 5 (to be codified at Transp. Code § 550.065(c)(4)). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the department with two of the three pieces of information. Thus, you must withhold the accident report under section 550.065(b).

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has also found that the following types of information are intimate and embarrassing for the purposes of common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have marked information in the submitted documents that must be withheld under section 552.101 of the Government Code in conjunction with common law privacy.

With respect to the remainder of the submitted information, we address your argument under section 552.108 of the Government Code. Section 552.108 provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

. . .

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication . . .

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

. . . .

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in a conviction or deferred adjudication . . .

You contend that the submitted information is excepted from disclosure under section 552.108(a)(2) and (b)(2) because “the investigation did not result in a conviction or deferred adjudication.” However, the submitted documents appear to relate to an investigation conducted by the city to determine civil liability arising from the accident. Section 552.108 is inapplicable to a police department’s internal administrative investigations that do not involve an investigation of crime. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). Because you do not explain, nor does it appear, how the submitted information relates to a criminal investigation, we find that the submitted information is not excepted from disclosure under section 552.108.

You also contend that portions of the submitted information are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

We agree that portions of the submitted information relate to Texas driver's licenses and motor vehicle titles and registrations issued by the State of Texas. We have marked this information, which you must withhold under section 552.130.

We also note that a portion of the submitted information is excepted from disclosure under section 552.136 of the Government Code. Section 552.136, recently added to the Public Information Act by the Seventy-seventh Legislature, provides, in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.¹

We have marked an account number in the submitted information that must be withheld under section 552.136.

In summary, you must release the information responsive to the request for correspondence to and from the company conducting the search of a police chief, with the exception of that portion of the information we previously determined to be excepted under section 552.117(2). You must withhold the submitted peace officer's accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. You must also withhold a portion of the submitted information that we have marked under section 552.101 and common law privacy. You must withhold the marked Texas driver's license information and vehicle title and registration information under section 552.130. Finally, you must withhold the marked account number under section 552.136. You must release the remainder of the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

¹Act of May 14, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Tex. Gen. Laws 614.

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

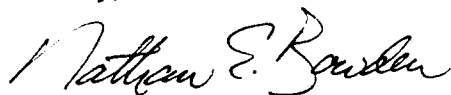
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Nathan E. Bowden". The signature is written in a cursive, flowing style.

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 156425

Enc: Submitted documents

c: Mr. Jeff Branscome
308 Woodstream Circle
Friendswood, Texas 77546
(w/o enclosures)